

STATE OF MICHIGAN  
COURT OF APPEALS

---

RACHEL WILLIAMS,

Plaintiff-Appellant,

v

DETROIT NEWSPAPER AGENCY,

Defendant-Appellee.

---

UNPUBLISHED

August 4, 1998

No. 199066

Wayne Circuit Court

LC No. 95-528767 NO

Before: Murphy, P.J., and Young, Jr. and M. R. Smith\*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order entered in the trial court granting summary disposition pursuant to MCR 2.116(C)(10) on plaintiff's racial discrimination claim brought pursuant to the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff has failed to present evidence sufficient to create a genuine issue of material fact with regard to whether she was treated differently than members of a difference race who were similarly situated. *Lytle v Malady*, 456 Mich 1; 566 NW2d 582 (1997); *Meagher v Wayne State University*, 222 Mich App 700, 709; 656 NW2d 401 (1997); *Reisman v Regents of Wayne State University*, 188 Mich App 526, 538; 470 NW2d 678 (1991); *Bowerman v Malloy Lithographing, Inc.*, 171 Mich App 110, 115; 430 NW2d 742 (1988). Viewing the record documentation in favor of plaintiff and granting plaintiff the benefit of any reasonable doubt, *Horn v Dep't of Corrections*, 216 Mich App 58, 66; 548 NW2d 600 (1996), the seven documents<sup>1</sup> concerning the "posting" of "batches" during the Performance Improvement Plan period are of insufficient number to determine whether plaintiff's job performance during this period was superior to the performances of Caucasian employees during the same period. Moreover, plaintiff's affidavit contains mostly statements of conclusion or opinion unsupported by specific factual allegations upon which they might be based. *Bowerman, supra*. To the extent that she sets forth allegations of fact in her affidavit, those factual allegations demonstrate isolated instances of deficient job performance by Caucasian employees and not sustained patterns of deficient job performance coupled with disruptive emotional outbursts and episodes of insubordination –

\* Circuit judge, sitting on the Court of Appeals by assignment.

the total conduct upon which plaintiff's termination was premised. Accordingly, plaintiff failed to present any evidence of similarly-situated Caucasian employees being treated differently than plaintiff. Summary disposition was correctly entered.

Additionally, plaintiff failed to establish a prima facie case of unlawful retaliation under Elliott-Larsen. MCL 37.2701; MSA 3.548(701). The record is devoid of documentary evidence establishing that defendant knew of plaintiff's complaint to the Equal Employment Opportunity Commission. *DeFlaviis v Lord & Taylor*, 223 Mich App 432; 566 NW2d 661 (1997); *Booker v Brown & Williams Tobacco Co, Inc*, 879 F2d 1304 (CA 6, 1989).

Affirmed.

/s/ William B. Murphy  
/s/ Robert P. Young, Jr.  
/s/ Michael R. Smith

<sup>1</sup> The documents appended to plaintiff's appellate brief as Exhibits 1, 2, 3, 6, 10 and 12 are not in the lower court record. Plaintiff may not enlarge the record on appeal ex parte and, therefore, this Court will not consider these documents when evaluating the merits of plaintiff's claimed errors. *People v Taylor*, 383 Mich 338, 362; 175 NW2d 715 (1970).